



ILLINOIS COMMERCE COMMISSION

March 21, 2003

Lenox Township, Warren County, Illinois,
Petitioner,

Vs.

State of Illinois, Department of Transportation, and The Burlington Northern
and Santa Fe Railway Company,
Respondents.

T03-0022

Petition for an Order authorizing the permanent closure and removal of a grade
separation structure located at the intersection of Lenox Township Road TR 169
and the tracks of The Burlington Northern and Santa Fe Railway Company at
Milepost 195.0, DOT No. 004 702J.

Mr. George Hennenfent
Hattery Simpson West
P.O. Box 260
Roseville, IL 61473-0260

Dear Mr. Hennenfent:

Receipt is acknowledged of the original and five (5) copies of the Petition filed March 20, 2003 in the
above matter.

Processing and Information Section

kl

cc: Mr. James Easterly, IDOT
Mr. W. Douglas Werner, BNSF
Ms. Cheryl Townlian, BNSF
CT Corporation System, BNSF
Lenox Township

COPY

RECEIVED
MAR 20 2003

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
RAIL SAFETY SECTION

Lenox Township, Warren County, Illinois,

Petitioner,

vs.

State of Illinois, Department of Transportation, and
The Burlington Northern and Santa Fe Railway Company,

Respondents.

Case No. 703-0022

**PETITION FOR AN ORDER AUTHORIZING THE PERMANENT CLOSURE
AND REMOVAL OF A GRADE SEPARATION STRUCTURE LOCATED AT
THE INTERSECTION OF LENOX TOWNSHIP ROAD TR 169 AND THE
TRACKS OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY AT MILEPOST 195.0, DOT NO. 004 702J**

Comes now the Petitioner, Lenox Township, by counsel, George Hennenfent,
HATTERY, SIMPSON & WEST, and in support of its petition to the Illinois Commerce
Commission, states as follows:

1. Petitioner, Lenox Township, is an Illinois municipal corporation.
2. Respondent, Burlington Northern Santa Fe ("BNSF") is a Delaware corporation authorized to transact business in the State of Illinois, and operates a common carrier service by railroad in interstate and intrastate commerce, with certain trackage and other facilities located throughout the State of Illinois, including Lenox Township, Warren County, State of Illinois.
3. Township road TR 169 is an east/west roadway located within the geographic boundaries of Lenox Township and is under the jurisdiction of Lenox Township.

DOCKETED

4. BNSF operates certain railroad trackage extending in a generally northeast to southwest direction through Lenox Township, Warren County, Illinois.
5. Lenox Township Road TR 169 traversed the trackage of BNSF by virtue of a grade separation structure at milepost 195.0, DOT No. 004 702J.
6. Lenox Township recommend and request that the grade separation structure at Milepost 195.0, DOT No. 004 702J be permanently closed to vehicular and pedestrian traffic, and the roadway barricaded as the public convenience and necessity no longer require the existence of the aforesaid grade separation structure.
7. In preparation for the filing of this Petition, Lenox Township has, in accordance with all legal requirements, passed its ordinance and resolution vacating Lenox Township Road TR 169 on both sides and through the subject grade separation structure at Milepost 195.0, DOT No. 004 702J. Attached hereto, marked Exhibit 1 and made a part hereof is a true and accurate copy of Lenox Township Board's resolution and ordinance vacating the subject roadway at said location.
8. Lenox Township requests incentive compensation in the amount of \$25,000.00 from the Illinois Commerce Commission ("ICC") in accordance with the policy of the ICC as incentive for the voluntary closure of the Lenox Township Road TR 169 at grade crossing.
9. Lenox Township believe that the provisions of 625 ILCS 5/18c-7401(3) have been met and the at grade crossing can be closed, barricaded and removed without further order of the Illinois Commerce Commission("ICC").

However, to the extent a determination and order is required from ICC as to the closure and/or award of incentive compensation, then Lenox Township hereby requests the ICC enter an order permanently closing and abolishing the at grade crossing in question and award incentive compensation in accordance with the policy of the ICC.

10. Lenox Township, in accordance with all legal requirements, has passed its ordinance and resolution vacating TR 169 on both sides and over the subject at grade crossing. Attached hereto and marked as Exhibit 1 and made a part hereof is a true and accurate copy of Lenox Township's resolution and/or ordinance vacating the subject roadway at the above-described location.

WHEREFORE, Petitioner Lenox Township, respectfully requests the Illinois Commerce Commission, if it deems it necessary, set the aforesaid matter for hearing and to the extent required by law enter an order abolishing and permanently closing the at grade crossing located at the intersection of vacated Lenox Township Road TR 169 and the trackage of BNSF at mile post 195.0, DOT No. 004 702J, award incentive compensation for the voluntary closure of the subject at grade crossing and such other relief as the Illinois Commerce Commission deems just and appropriate.

LENOX TOWNSHIP, WARREN COUNTY, ILLINOIS

By: Milo Sprout
Milo Sprout

STATE OF ILLINOIS)
) SS:
COUNTY OF WARREN)

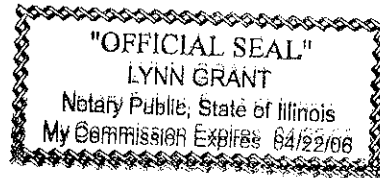
VERIFICATION

I, Milo Sprout, being first duly sworn upon oath, depose and state that I am
Highway Commissioner of Lenox Township, Warren County, Illinois, that I am
duly authorized to sign, verify and file the foregoing Petition and that the matters set forth
in said petition are true and correct to the best of my knowledge, information and belief.

Milo Sprout
Milo Sprout

Subscribed and sworn to before me this 17 day of MARCH, 2003.

Lynn Grant
Notary Public



George Hennenfent
HATTERY, SIMPSON & WEST
Attorneys for Petitioner
130 N. Main Street
Roseville, IL 61473
(309) 426-2176 Telephone
(309) 426-2177 Facsimile


CERTIFICATE

I, CAROL PARRISH, hereby certify that I am the Clerk for Lenox Township, Warren County, Illinois. I certify that attached to this certificate are true and accurate copies of the following documents, the originals of which are on file in the records of Lenox Township:

1. Petition to Vacate
2. Certificate of Publication
3. Declaration of Township Road Vacation
4. Amendment to Declaration of Township Road Vacation

To the best of my knowledge and belief, the Highway Commissioner of Lenox Township has taken the necessary action to vacate that part of Township Roads TR 70 (60th Street) and 169 (140th Avenue) described in the petition.

Dated April 21, 2002.



Carol Parrish, Township Clerk, Lenox
Township, Warren County, Illinois

Exhibit 1

Cover Page
Affidavit of Milo Sprout
Lenox Township Road Commissioner
Vacation of Roads located in:
Southwest Quarter of Section 19
And
Northwest Quarter of Section 30
T 10 N - R 2 W
Warren County, Illinois

AFFIDAVIT

I, Milo Sprout, first being duly sworn upon my oath, state as follows:

1. I am the highway commissioner for Lenox Township, Warren County, Illinois. I am a resident of Lenox Township, Warren County, Illinois. My business address is 861 150th Avenue, Monmouth, IL 61462.
2. I received a Petition, a copy of which is attached, which was signed by more than twelve legal voters of Lenox Township praying for the vacation of the road described in the Petition.
3. I provided ten (10) days written notice of the time and place of the examination of the road and hearing on the Petition to the County Superintendent of Highways of Warren County. There was no other municipality that was affected by the vacation of the road. I also caused a notice to be published in the Monmouth Review Atlas two times with the first publication being Wednesday, January 9, 2002 and the second publication being dated Wednesday, January 16, 2002. A Certificate of Publication is attached.
4. There were no objectors to the Petition at the hearing. At the hearing, I publicly announced that I would grant the Petition. A copy of my declaration is attached. Also attached is a copy of an amendment to the declaration correcting an error in the legal description of the property vacated.
5. I filed a copy of my decision with the Lenox Township District Clerk within five (5) days of the date of the hearing. I also sent a copy of the decision to the Warren County Superintendent of Highways. At the hearing I found that the vacation of the road described in the Petition was:
 - (a) In the public and economic interest;
 - (b) Any person residing or owning land within two (2) miles of the vacated road would still have reasonable access by way of a motor vehicle or other portable farm machinery commonly used in the area to farm land he owns or operates and to community and trade centers.
6. No lands of adjoining property owners were adversely affected by the decision to vacate the road, and hence there were no damages to be paid or released. I determined that the preliminary hearing should also be the final

hearing on the vacation of the road because there were no damages to be assessed or released.

7. The area to be vacated was surveyed according to statute.

DATED April 18, 2002

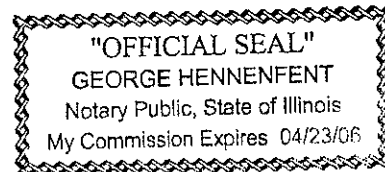
Milo Sprout

MILO SPROUT
HIGHWAY COMMISSIONER
LENOX TOWNSHIP

SIGNED AND SWORN TO BEFORE ME

THIS 18 DAY OF April, 2002.

George Hennenfent
NOTARY PUBLIC



P E T I T I O N

TO VACATE AND LAY OUT NEW ROAD

We, the undersigned legal voters in the Town of Lenox,

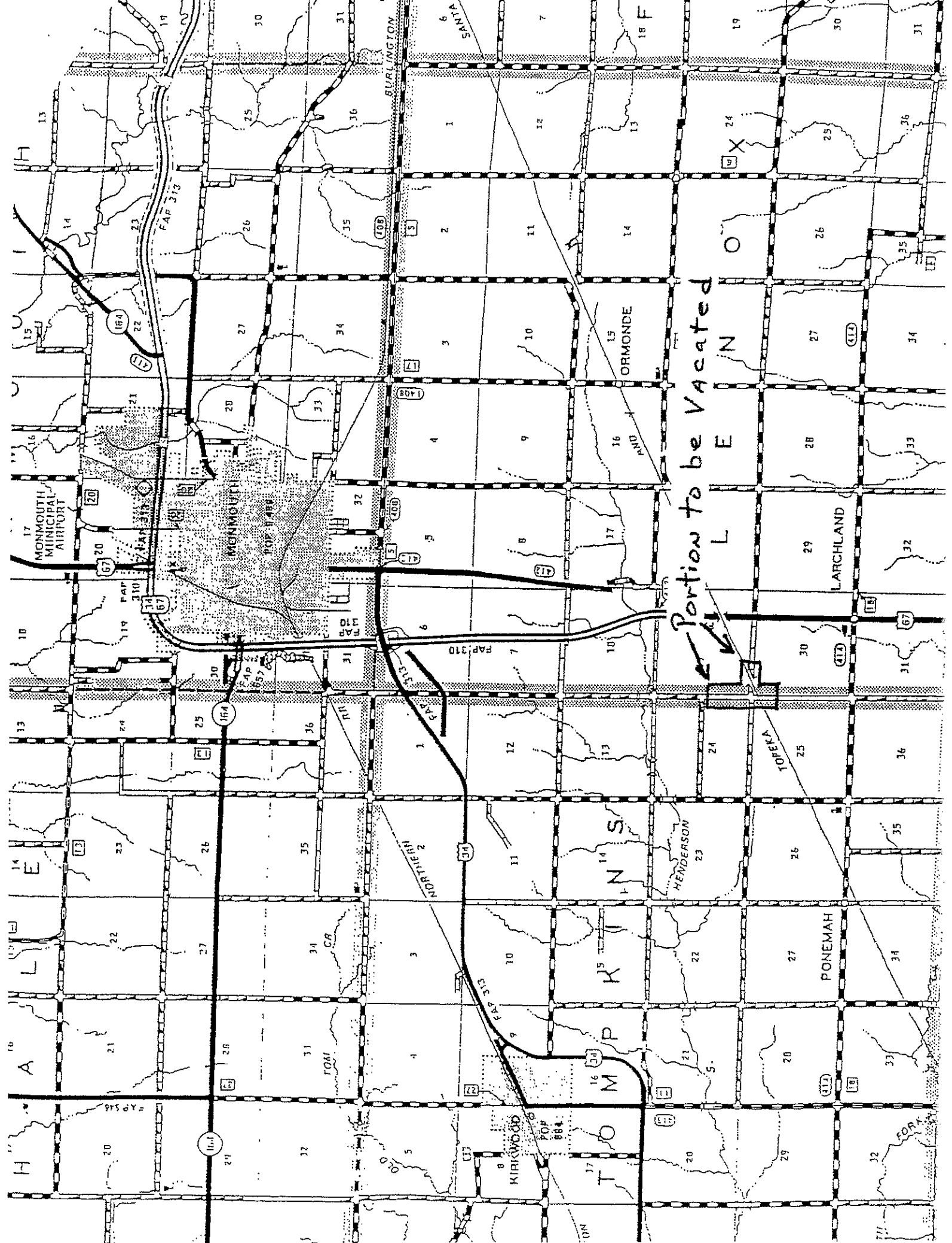
County of Warren, hereby petition Milo Sprout

Highway Commissioner(s) for said Town(s) respectively, praying that the

Public Highway designated as beginning at Approximately 1,960 Feet South of BNSF Right of Way Crossing Mile Post 195.2 (DOT No. 004703R) on TR 70(60th Street) And North of BNSF Right of Way Crossing Mile Post 195.2 on No. 004703R) on TR 70(60th Street) Approximately 3,020 feet to the South Right of Way of TR 163A(145th Avenue) And approximately 15 Feet East of BNSF Right of Way Mile Post 195.0 (DOT No. 004702J) on TR 169(140th Avenue) and Approximately 1 Feet West of BNSF Right of Way Mile Post 195.0 (Dot No. 004702J) on TR 169(140th Avenue) To TR 70(60th Street) East Right Way.

_____ be hereby vacated,
and relocated to the following location: _____

<u>Loew W. Board 1683 90th St</u>	<u>Edna Carlson 700-160 Ave Monmouth</u>
<u>John E. Hosen 1170 - 125th Ave Monmouth II</u>	<u>Kathryn L. Leport - 1663-70th St Monmouth</u>
<u>John Daniel Jones 1316 100th St Monmouth</u>	<u>Russell Stewart 991 180th Ave Monmouth</u>
<u>John J. Olson 614-120th Ave Monmouth</u>	<u>Melaine Stewart 991 180th Ave Monmouth</u>
<u>Carol Parrish 1046-140th Ave Monmouth</u>	<u>Paul L. Shuman 1651 8th St. Monmouth</u>
<u>Betsy Hamil 1711 70th St. Monmouth</u>	<u>Sandra L. Shuman 1651 80th St Monmouth</u>
<u>Al Eugene Mill 1580-90th St. Monmouth</u>	<u>Craig Long 687 150th Ave Monmouth II</u>
<u>Marcelyn M. Miller 1580-90th St. Monmouth</u>	<u>Yester E. Lipes 743 150th Ave Monmouth</u>
<u>Norma Snook 1507 110th St. Monmouth</u>	<u>Janet D. Lipes 743 150th Ave Monmouth</u>
<u>Mark P. Smith 1046 140th Ave Monmouth</u>	<u>William D. Lipes 1505 100th St Monmouth</u>
<u>Birdie Carlson 700-160 Ave Monmouth</u>	<u>Pauline Shuman 1050 150th Ave Monmouth</u>



Portion to be Vacated

Publish 1-9, 1-16, 2002

PUBLIC NOTICE

Notice is hereby given that a Public Hearing will be held at the Town Hall in Lenox Township at 7 PM C.S.T. on January 22, 2002, relative to the vacation of parts of two roads in Lenox Township.

The portion to be vacated is from approximately 1/2 mile North of the Ponemah blacktop (130th Avenue) on TR 70 (60th Street) to TR 163A (145th Avenue) on the Lenox Township-Tompkins Township line. And from TR 70 (60th Street) East on TR 169 (140th Avenue) approximately 1/4 miles.

Milo Sprout
Commissioner
Lenox Road District

CERTIFICATE OF PUBLICATION

Monmouth, Illinois

I, the undersigned, of the Review Atlas Printing Company, do hereby certify that I am duly authorized agent in this behalf, and I further certify that a notice of which the annexed printed notice is a true copy, was published in **The Monmouth Review Atlas**, a daily secular newspaper of general circulation, printed and published by the said Review Atlas Printing Company, at the City of Monmouth, Warren County, Illinois, and that the said notice was published once each day/week for the space of days/weeks successively, and was contained in each and every copy of the several issues in which the same was published, and that the first publication of said notice was in the issue of said paper bearing

date Wednesday, January 9, 2002

and the last publication in the issue thereof bearing date Wednesday, January 16, 2002 and that said Monmouth Review Atlas has been regularly published in said Warren County for at least 12 months prior to the first publication of said notice.

The Monmouth Review Atlas is a newspaper as defined in Act — Chapter 100, Sections 1 and 5, Illinois Revised Statutes.

Dated this 19th day of January, 2002

Amy Burton
Authorized Agent Review Atlas Printing Company.

Printer's Fee \$24.00

Received above fee _____

this _____ day of _____, 2002

Per Review Atlas

Declaration of Township Road Vacation

A final hearing having been heard at the same time as the preliminary hearing on the petition to vacate TR 70(60th Street) from Approximately $\frac{1}{2}$ mile North of the Ponemah Black Top(130th Ave.) to TR 163A(145th Ave.) and to vacate TR 169(140th Ave.) from TR 70(60th Street) East Approximately $\frac{1}{4}$ mile in the Township of Lenox, County of Warren, State of Illinois and there being no objectors.

IT IS HEARBY ordered that the petition to vacate TR 70(60th Street) from approximately $\frac{1}{2}$ mile North of the Ponemah Black Top(130th Ave.) to TR 163A(145th Ave.) and to vacate TR 169(140th Ave.) from TR 70(60th Street) East approximately $\frac{1}{4}$ mile in the Township of Lenox, County of Warren, State of Illinois, be the same and granted that said portions of TR 70 and TR 169 be and the same is vacated.

That title to the North $\frac{1}{2}$ mile of TR 70(60th St.) from TR 169(140th Ave.) to TR 163A(145th Ave.) shall vest in the owners of the SW corner of section 19 in Lenox Township T10N-R2W and the owners of the SE corner of section 24 in Tompkins Township T10-R3W.

That title to the South $\frac{1}{2}$ mile of TR 70(60th St.) from approximately $\frac{1}{2}$ mile North of the Ponemah Black top (130th Ave.) to TR 169(140th Ave.) shall vest in the owners of the NW corner of section 30 in Lenox Township T10N-R2W and the owners of the NE corner of section 25 in Tompkins Township T10N-R3W.

That title to TR 169(140th Ave.) from TR 70(60th St) to the BNSF West ROW(Approximately 631 Feet) shall vest in the owners of the SW corner of section 19 in Lenox Township T10N-R3W.

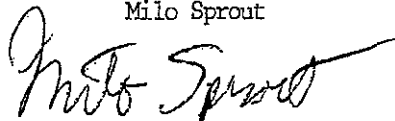
That title to TR 169(140th Ave) that passes through the BNSF ROW shall vest in the BNSF. X

And said vacation of portions of TR 70(60th St) and TR 169(140th Ave.) in Lenox Township is in the Public and economic interest and will not deprive residents or owners of proximate land reasonable access elsewhere.

IT IS FURTHER ORDERED THAT THIS ORDER BE AND THE SAME IS A FINAL ORDER.

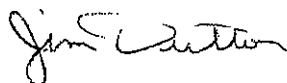
Dated 1-23-02

Milo Sprout



Lenox Township Highway Commissioner

Jim Dutton



Tompkins Township Highway Commissioner

AMENDMENT TO DECLARATION OF TOWNSHIP ROAD VACATION

I, Milo Sprout, Lenox Highway Township Commissioner, hereby amend the Declaration of Township Road Vacation dated January 23, 2002, by deleting the following:

"That title to the North ½ mile of TR70 (60th St.) from TR 169 (140th Ave.) to TR 163A (145th Ave.) shall vest in the owners of the SW corner of Section 19 in Lenox Township T 10N-R2W and the owners of the SE corner of Section 24 in Tompkins Township T10-R3W.

That title to the South ½ mile of TR70 (60th St.) from approximately ½ mile North of the Ponemah Blacktop (130th Ave.) to TR 169 (140th Ave.) shall vest in the owners of the NW corner of Section 30 in Lenox Township T 10-N-R2W and the owners of the NE corner of Section 25 in Tompkins Township T10-N-R3W."

and inserting in lieu thereof the following:

"That title to the South ½ mile of TR70 (60th St.) from TR 169 (140th Ave.) to TR 163A (145th Ave.) shall vest in the owners of the SW corner of Section 19 in Lenox Township T 10N-R2W and the owners of the SE corner of Section 24 in Tompkins Township T10-R3W."

That title to the North ½ mile of TR70 (60th St.) from approximately ½ mile North of the Ponemah Blacktop (130th Ave.) to TR 169 (140th Ave.) shall vest in the owners of the NW corner of Section 30 in Lenox Township T 10-N-R2W and the owners of the NE corner of Section 25 in Tompkins Township T10-N-R3W.

This change is made because the north south directions above were inadvertently switched. This amendment conforms the Declaration of Township Road Vacation to the survey, the facts presented at the hearing, and the intent of the original Declaration.

Dated: April 18, 2002.


Milo Sprout
Lenox Township Highway Commissioner

PROOF OF SERVICE

George Hennenfent, an attorney, being duly sworn upon oath, deposes and says that on the 18th day of March, 2003, he caused to be served a true and correct copy of the Petition for an Order Authorizing the Permanent Closure and Removal of a Grade Separation Structure Located at the Intersection of Lenox Township Road TR 169 and the Tracks of the Burlington Northern and Santa Fe Railway Company at Milepost 195.0, DOT No. 004 702J, upon:

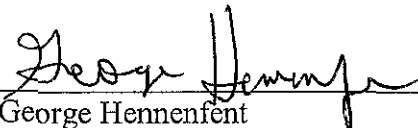
Illinois Commerce Commission
527 E. Capitol
Division of Processing
Springfield, IL 62701

Illinois Department of Transportation
James Easterly
23 S. Dirksen Parkway
Springfield, IL 62764

CT Corporation System
BNSF
208 S. LaSalle Street
Chicago, IL 60604

W. Douglas Werner
BNSF
P.O. Box 961039
Ft. Worth, TX 76161-0039

by certified mail, by depositing same in the U.S. Mail depository at Roseville, Illinois, in envelopes with postage prepaid.


George Hennenfent